

February 13, 2007

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: King County Department of Transportation File No. **V-2484**
Proposed Ordinance No. **2006-0300**
Parcel No. **662040-0590**

PETER & GINA NUNAN

Road Vacation Petition

Location: Portion of 2nd Avenue South

Petitioners: **Peter & Gina Nunan**¹
14924 – 57th Avenue South
Tukwila, Washington 98168
Telephone: (253) 205-3088

King County: Department of Transportation,
Road Services Division, *represented by*
Nicole Keller
201 S. Jackson St.
Seattle, Washington 98104-3856
Telephone: (206) 296-3731
Facsimile: (206) 296-0567

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:
Department's Final:
Examiner's:

Approve road vacation
Approve road vacation
Approve road vacation

DEPARTMENT'S REPORTS:

The Department of Transportation's written reports to the King County Hearing Examiner for Item No. V-2484 were received by the Examiner on August 11, 2006 and December 21, 2006.

¹ Successor petitioners to Kristina M. Long, original petitioner.

PUBLIC HEARING:

In addition to reviewing the Department's Reports and examining available information on file with the petition, the Examiner conducted a public hearing on the subject as follows:

The hearing on Item No. V-2484 was opened by the Examiner on September 6, 2006, in the Hearing Examiner's Conference Room, 400 Yesler Way, Seattle, WA 98104, and continued administratively for receipt of an intended easement necessary for approval of the vacation. Due to unresolved disputation of the adequacy of the easement by a neighboring property owner (Robert Brothers), the hearing was reopened on January 24, 2007, again in the Hearing Examiner's Conference Room, to receive further testimony from the parties (the Nunans, Mr. Brothers and KCDOT) and to receive an updated recommendation from KCDOT. (No persons attended the January 24, 2007 hearing session except for the KCDOT representative.) The reopened hearing was then again continued administratively, the second time for receipt of a copy of a recorded revised easement, which was received January 30, 2007. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Road name and location:	Portion of 2nd Avenue South
Right of way classification:	C Class
Area:	4,849.80 square feet
Compensation:	\$24,182.50

2. The Notice of Hearing on the Department's report was given as required by law, and a hearing on the report was conducted by the Examiner on behalf of the Metropolitan King County Council.
3. Except as provided below, the Examiner adopts and incorporates herein by this reference the facts set forth in the Department's reports to the Examiner for the September 6, 2006 and January 24, 2007 public hearing sessions and the statement of facts contained in Proposed Ordinance No. 2006-0300. The Department's reports will be attached to those copies of this report and recommendation that are submitted to the County Council.
4. Maps showing the vicinity of the proposed vacation and the specific area to be vacated appear in the hearing record as exhibit nos. 7 and 9.
5. The subject right-of-way is currently unopened for public use and is not publicly maintained. It is used informally for access to adjacent property. (See next Finding.)
6. No easements are necessary to be retained for the construction, repair and maintenance of public utilities and services. An easement has been recorded which establishes a private access easement over the "current paved travel surface area" within the vacation area for adjacent property owners, with the easement supplemented by a five foot wide additional "unbuildable zone" abutting the northwest side of the paved area. The unbuildable zone was added to the

originally proposed easement to provide additional clear area for large vehicle maneuvering by neighboring property owner Robert Brothers. KCDOT on direct inspection of the area has found the unbuildable zone width to provide adequate clear area. Mr. Brothers had disputed the adequacy of the proposed additional five-foot width to provide sufficient clear area. Though the hearing was reopened to allow testimony from him as well as other parties, he did not attend the reopened hearing (which was the subject of due notice) or communicate further with the Hearing Examiner's Office. His absence must be construed to mean that he has dropped his opposition.

7. Vacation of the right-of-way as proposed would have no adverse effect on the provision of access and fire and emergency services to the abutting subject property and surrounding area.
8. The right-of-way is not necessary for the present or future public road system for travel or utilities purposes.
9. The compensation required by law to be paid as a condition precedent to vacation of this road has been deposited with King County.

CONCLUSION:

1. The right-of-way segment subject to this petition is useless as part of the King County road system, and the public will be benefited by its vacation.

RECOMMENDATION:

APPROVE proposed Ordinance No. 2006-0300 to vacate the subject road right-of-way.

RECOMMENDED February 13, 2007.

Peter T. Donahue
King County Hearing Examiner

TRANSMITTED February 13, 2007, to the following parties and interested persons:

Robert Brothers
205 S. 101st St.
Seattle WA 98168

Comcast
Attn: Jim Nies
4020 Auburn Way N.
Auburn WA 98002

Nettie Cunningham
10114 - 2nd Ave. S.
Seattle WA 98168

Andrew Klem
10117 - 2nd Ave. S.
Seattle WA 98168

Peter & Gina Nunan
14924 - 57th Ave. S.
Tukwila WA 98168

Puget Sound Energy
Attn: Sharon Scott
P.O. Box 90868
Bellevue WA 98009

Qwest
Attn: Don Dauphiny
1550 Newport Way NW
Issaquah WA 98027

Val Vue Sewer District
Attn: Steve Fletcher
P.O. Box 69550
Seattle WA 98168

Kim Claussen
DDES/LUSD
MS OAK-DE-0100

Neil DeGoojer
DNRP/WLRD
MS KSC-NR-0600

Sarah Gagnon
DNRP - Wastewater Trtmt.
MS KSC-NR-0503

Nancy Gordon
KCDOT/D&C
MS KSC-TR-0431

David Gualtieri
KCDOT/CIP & Planning
MS KSC-TR-0317

Denise Hauck
KC Dept. of Exec. Svcs.
MS ADM-ES-0500

Bill Hintz
KC DOT, Rd. Maint.
MS RSD-TR-0100

Nicole Keller
KC DOT, Rd. Svcs. Div.
MS KSC-TR-0231

Kristen Langley
KC-DOT/RSD
MS KSC-TR-0222

Tom Lew
KC DNRP/WLRD
MS KSC-NR-0600

Paulette Norman
KCDOT/RD SERV.
MS KSC-TR-0231

Robert Nunnenkamp
KC DNRP/Prog Dev.
MS KSC-NR-0700

Lydia Reynolds-Jones
KC DOT/RD SERV.
MS KSC-TR-0231

Charlie Sundberg
Bus. Rel. & Economic Dev.
MS BOA-EX-2000

Kelly Whiting
KC DOT, Rd. Svcs. Div.
MS KSC-TR-0231

NOTICE OF RIGHT TO APPEAL
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) *on or before* **February 27, 2007**. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before* **March 6, 2007**.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within twenty-one (21) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE SEPTEMBER 6, 2006 AND JANUARY 24, 2007 PUBLIC HEARING ON
DEPARTMENT OF TRANSPORTATION FILE NO. V-2484.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Nicole Keller and Kelly Whiting, representing the Department, and Mr. & Mrs. Robert Brothers.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 DOT report to the Hearing Examiner dated August 9, 2006 with 15 attachments
- Exhibit No. 2 Petition transmittal letter to DOT from the Clerk of the Council dated August 22, 2003
- Exhibit No. 3 Letter from Kristina M. Long, original petitioner dated August 18, 2003
- Exhibit No. 4 Original petition for vacation of a county road
- Exhibit No. 5 Copy of the filing fee, check #3559 from the original petitioner Kristina Long
- Exhibit No. 6 Receipt #00636 from the King County Council to Kristina Long dated August 22, 2003 for the filing fee
- Exhibit No. 7 Vicinity map from Thomas Brothers, page 625, A-5
- Exhibit No. 8 King County Assessor's plat map of Panorama Heights
- Exhibit No. 9 Map depicting vacation area
- Exhibit No. 10 Letter to Kristina Long from Dennis Gorley dated October 23, 2003 identifying DOT procedures and a request for a revised petition
- Exhibit No. 11 Revised petition for vacation which included a corrected legal description of the original petitioner's property received November 12, 2003
- Exhibit No. 12 Letter to Kristina Long from Dennis Gorley dated February 11, 2004 requesting a survey of the existing paved surface in the vacation area
- Exhibit No. 13 Letter to Kristina Long from Paulette Norman dated January 6, 2006 identifying DOT recommendation and requesting compensation
- Exhibit No. 14 Compensation worksheet
- Exhibit No. 15 Statutory Warranty Deed dated December 13, 2005 conveying adjacent property to Peter and Gina Nunan
- Exhibit No. 16 Revised petition dated April 18, 2006 signed by Peter and Gina Nunan
- Exhibit No. 17 Compensation transmittal letter to Nicole Keller from Peter and Gina Nunan dated April 5, 2006
- Exhibit No. 18 Copy of compensation check
- Exhibit No. 19 King County deposit receipt dated April 11, 2006
- Exhibit No. 20 Transmittal letter to the Clerk of the Council from Paulette Norman dated January 9, 2006
- Exhibit No. 21 Ordinance transmittal letter to Councilmember Larry Phillips from King County Executive dated June 28, 2006
- Exhibit No. 22 Proposed ordinance 2006-0300
- Exhibit No. 23 Fiscal Note
- Exhibit No. 24 Notice of hearing posted near the site on August 8, 2006
- Exhibit No. 25 Affidavit of posting for hearing
- Exhibit No. 26 Affidavit of publication
- Exhibit No. 27 Letter from Robert C. Brothers to DOT dated August 21, 2006
- Exhibit No. 28 Declaration of Easements
- Exhibit No. 29 Letter from Road Services to the Hearing Examiner dated December 20, 2006, re: 5 foot buffer zone being sufficient
- Exhibit No. 30 Recorded easement for the 5 foot buffer